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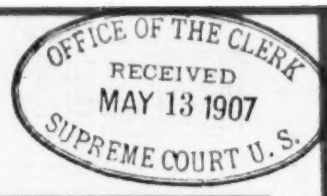

IN THE

UNITED STATES SUPREME COURT.

No. 258.

AMANDA M. S. WHITFIELD (Plaintiff in Error),
Petitioner,

vs.

ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut
(Defendant in Error),
Respondent.

PETITION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF.

JONES, JONES, HOCKER & DAVIS,
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vs.

ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut (Defendant in Error),
Respondent.

The Ætna Life Insurance Company, defendant in the above entitled cause, moves the Court to grant it a rehearing in this case for the following reasons:

1st. The opinion proceeds upon the assumption that there was general insurance covering suicide which is attempted to be cut down or limited by the clause providing for the payment of $500 in case of suicide, whereas this is not the contract, and the assumption is unwarranted.

2nd. The opinion delivered is opposed to the last controlling authority of the Supreme Court of Missouri, Læssig v. Travelers' Ins. Co., 169 Mo. 272.

JAMES C. JONES,
Attorney for Ætna Life Ins. Co.

We certify that the foregoing petition is, in our opinion, well founded, and is not made for the purpose of delay.

James C. Jones

ARGUMENT IN SUPPORT OF MOTION FOR REHEARING.

I.

We hesitate to press this case upon your Honor's attention again, and would not do so but for the fact that the opinion proceeds, and is wholly based, on an utterly false premise, and believing, as we do, that if this fallacy exists and is perceived by the Court, it will not refuse, despite the customary fate that usually attends motions of this character, to grant the request that this case be reheard.

The basic assumption in the opinion delivered is that there is primary liability for $5,000, which, disregarding the suicide clause, is payable to the insured under the facts in this case, and that this liability is attempted to be limited or cut down by the clause agreeing to pay $500 in case of suicide, whereas in fact there is no primary liability for $5,000 for which the defendant is liable under the facts stipulated, and the provision relating to suicide does not attempt to limit or cut down any previously incurred liability.

The only insurance is against **death caused in a particular manner**, *i. e.*, caused by "external violent and **accidental** means".

Suicide by a sane man is not an accident.

The insured here committed suicide while sane, and there was no attempt to prove he was insane.

On this state of facts there is in this case no insurance for $5,000 (the principal sum) against death by suicide while sane, because death so caused is **not an accident**, and the insurance is only against **accidental** death.

Hence, when the Court says (at page 5 of the opinion) that "the question arises whether the contract of insurance

limiting the recovery to one-tenth of the principal sum specified was valid and enforcible", it states as the question for decision a question that does not and can not arise on this record, because the provision that one-tenth of $5,000.00 shall be paid in case of suicide, is not a provision **in limitation of** an amount **otherwise recoverable**, but is a provision fixing an amount of **original liability**; a provision but for which **nothing** would be **recoverable.**

Will your Honors test the case this way? Eliminate the suicide provision from the policy altogether. The agreement would then be to pay $5,000 in the event of **accidental** death, with no limitation for a lesser amount in case of suicide. Would, then, death, caused by suicide intentionally committed, be death by external violent and **accidental** means? Clearly not unless the Court means to hold that **sane suicide** is an **accident.**

Analysis of the policy will demonstrate that the suicide provision is not a **limitation** of the amount **otherwise recoverable** except for this **limitation**, but is an **original obligation** to pay $500 for suicide embodied in a contract where there would be no liability at all for sane suicide except for this original obligation.

The Missouri statute provides that "suicide shall be no defence", etc. No defence to what? Clearly to an action on a contract **where liability for suicide exists.** Liability for **sane suicide** does not exist under an accident policy and the statute does not undertake to create liability under an **accident** policy for **sane suicide**; yet the effect of this opinion is to accomplish just that result, *i. e.*, to **create** liability for suicide by a **sane** man on a policy where the obligation is to pay only for **insane** suicide, because only **insane** suicide is an accident.

Suppose a policy issued with no provision as to suicide at all—with no provision which either limits the amount of re-

covery or precludes recovery in the event of suicide. Suppose too that the insured under such a policy, without contemplating suicide when he applied for it, yet, after it is issued, while sane, deliberately takes his own life. Shall there be a recovery in such a case on a policy which insures only against **accidental** death? Is such a death **accidental?** Yet this is the clear and necessary result of your Honors' decision.

But the statute only says it shall be no **defense** that the insured committed suicide.

It does not **create** liability for suicidal death where the **character of death** is not such as is **insured against.**

In a **life insurance policy** there is insurance against death which **includes** suicide, and the statute is applicable.

In an **accident policy** there is insurance against suicide by an **insane** person, for this is **accidental** death.

In an **accident** policy there is **no insurance** against suicide by a **sane** man for this is **not accidental** death, and to this latter situation **the statute can not apply.**

The fallacy indicated is, we think, manifest in the second paragraph of the opinion. Your Honors ask, "Can an insurance company and the insured lawfully stipulate that in the event of suicide, not contemplated by the insured when he applied for the policy, the company shall not be bound to pay the principal sum **insured** but only a given **part** thereof?"

The answer to this question is, obviously, if the company by its contract and on the facts of the case is **obligated to pay the principal sum, except** for a stipulation in **limitation of,** or in **reduction of,** this obligation, and can **avoid** such liability **only** by reason of a provision in **limitation of, or reduction of,** this obligation, then it can not lawfully so stipulate. But if the company by its contract and on the facts of the case (in the absence of such stipulation) **is not obligated for the**

principal sum at all, and the stipulation is not in limitation, of, or reduction of, its obligation, but the **stipulation itself creates an obligation,** which otherwise does not exist, then it can lawfully so stipulate, for it is then no "agreement to pay only a given part" of its liability.

Your Honors hold that the contract is an **"evasion"** of the statute and tends to **"defeat the objects"** for which it was **enacted.**

If suicide by a sane man is not an accident, and the company (except for the stipulation) is **not liable at all,** then certainly it is not an **evasion** of the statute to stipulate for liability for $500 where, otherwise, no liability exists.

So, too, the object of the statute was not to **create liability** where under the contract **no liability was assumed,** but to prevent a stipulation exempting the company from a liability otherwise assumed. The statute was designed to preclude a **defence** to an obligation otherwise existing; it was not designed to make **intentional** suicidal death by a sane man an **accident.** So that in the end the questions presented by this record are:

Is suicide by a sane man accidental death?

Does the statute make suicide by a sane man accidental death?

These questions, in effect, are answered affirmatively by the opinion delivered, and it is because of our firm belief that these answers—this effect—is unintentional on the part of the Court, that we invite your Honors' attention to the case again and ask that it be reheard.

Any process of reasoning or construction that produces such monstrous results (morally speaking) as to make **intentional self-murder a thing against which parties can not contract,** a thing which they must encourage, a thing which they

must treat as **accidental** despite the fact that it is concededly **intentional,** certainly deserves the extreme o consideration before it is finally settled and passes int the realm of declared law. If the law is so written, if your Honors feel bound to so declare it, having done that which fully performs our duty in appealing to the different, the better, reasoning, we must be satisfied, for we can not do more, but we most respectfully urge that the enormity of the consequences (again speaking from the standpoint of morals) coupled with what we have pointed out as the seeming (and to us demonstrated) basic fallacy on which the opinion proceeds, justifies this Court in giving this case such further consideration as will assure it that the conclusion announced is clearly right.

So, too, where the Court says "whatever tends to **diminish** the plaintiff's **cause of action,** or to defeat recovery in whole or in part, amounts in law to a defense".

Conceding this; If, in the absence of the stipulation to pay $500 for suicide, there was no obligation to pay $5,000 for suicide by a sane man, how can it be said that the stipulation **diminishes** plaintiff's cause of action? Her cause of action is the policy and death within its terms. Whitfield certainly did not die from accidental means. (Acc. Ins. Co. v. Crandall, 120 U. S. 527.) His death was **intentionally** caused by himself. Consequently plaintiff had no cause of action on **that part of the policy** which insures against death through external violent and **accidental** means in the sum of $5,000. As to this cause of action (her right arising on this part of the contract) the defense is a **general denial,** *i. e.*, that Whitfield did not come to his death by **accident,** and it is stipulated that he did not, for it is stipulated he committed suicide **intentionally,** and suicide is not accident except in the

exceptional case of insane unintentional self-destruction, and plaintiff did not bring the case within this exception although it was stipulated (of record) that she might do so if she could.

Hence, as to this cause of action (her cause of action for $5,000 for accidental death) suicide is not interposed as a defense, but the general issue (*i. e.*, that Whitfield did not die through accident) is interposed as a defense, and clearly this defense is not inhibited by the statute. And as **suicide is not** interposed as a defense at all to **this** cause of action it follows that suicide is not interposed to "diminish" her cause of action "in whole or in part".

As to the cause of action arising out of the stipulation to pay $500 in case of suicide, sane or insane, no defense whatever is made. On the contrary the defendant has at all times stood ready to discharge, in full, wholly undiminished, its full obligation in this respect.

We think that a more careful analysis of this policy will disclose that there are distinctly two contracts, viz.:

First: A contract to pay $5,000 for accidental death; (which **includes** suicide by an **insane** man and **excludes** suicide by a **sane** man).

Second: A contract to pay $500 in case of suicide, whether sane or insane.

And that the **obligation** of **each** of these contracts is **separate and distinct**, and the one is not in limitation of the other, **or** if the second is in limitation of the first it is only so in the case of **insane** suicide which is the only instance where suicide is or can be an **accident.**

While it is true, as your Honors say, "When the company denied its liability for the whole of the principal sum, it certainly made a defense as to all of that sum except one-tenth", its defense as to this nine-tenths was not "that the insured

committed suicide", but "that the insured did not die from accident". The statute does not preclude "any defense", but only "a defense that the insured committed suicide".

Adopting your Honors' subdivision of the contract, as to nine-tenths of the principal sum (or more accurately speaking as to the whole principal sum) the **defense** was that the death **was not accidental**—nothing more; as to the other one-tenth (that is as to the special provision for $500 for suicide) there was no defense whatever.

So that conceding that the "legislative intent was to cut up by the roots any defense as to the whole and every part of the **sum insured,** which was grounded upon the **fact of suicide**", yet it is seen that as to this nine-tenths the **defense** was not grounded on the fact of **suicide,** and as to the remaining one-tenth there was no defense at all.

However, in our judgment, to consider this contract as providing ten-tenths insurance on the one hand, and only one-tenth on the other, is calculated to produce confusion.

The stipulation providing insurance for $500 in the event of suicide is not an insurance for one-tenth of the **sum insured;** it is not a one-tenth part of the principal sum carved out of the whole. A right of action on the primary cause of action, *i. e.*, for accidental death, is a right to the whole, or ten-tenths. The cause of action on the suicide stipulation which, by way of description, refers (it is true) to one-tenth of the principal sum, is a right to $500 for death by suicide, which may or may not be accidental, and this cause of action is for $500 independent of and wholly disassociated from the cause of action for $5,000. In other words the reference to "one-tenth of the principal sum" is nothing more or less than a convenient way of fixing the amount payable for suicide and is not an effort to reduce or limit the amount otherwise payable for suicide, be-

cause **but** for this **stipulation nothing** is payable in the event of **suicide** (save only in the exceptional case of insane suicide).

In closing this portion by this discussion, we beg to draw the attention of your Honors to this quotation of the opinion filed: "The manifest purpose of the statute was to make all inquiry as to suicide wholly immaterial, except where the insured committed suicide. Any contract inconsistent with the statute is void", and to inquire whether this statement is made advertently and heedful of the fact that it of necessity refers to an accident policy. If so, then it is deliberately held that **because of the statute suicide is always an accident** regardless of sanity or insanity; and it is because we feel that the statement is inadvertent, and that in making it your Honors for the nonce lost sight of the character of the policy, that we insistently, but with the utmost deference and respect, beg to direct your Honors' close attention to the language employed and the necessary effect of the conclusion announced. If this is said of a life policy as contradistinguished from an accident policy there would be less occasion for this insistence. In such a case there is general **liability** for **suicide** and an exception in limitation of, or in reduction of, this general liability in the event that suicide does "tend to diminish" the amount otherwise recoverable; but certainly this is not so as to an accident policy which does not insure against intentional suicide by a sane man but only against unintentional suicide by an insane man.

Your Honors cite in support of the proposition just quoted, Federal cases which deal only with life policies as contradistinguished from accident policies, and the Logan case from the Missouri Supreme Court, and in this case and in that very part of it which your Honors quote, the Court indicates that it had in mind the very point which we are urging now, for the Missouri Supreme Court says (quoted on p. 6 of your Honors' opinion):

"If one holds a general life policy and an accident policy, and is killed by lightning or commits suicide, **so that he may be said to have died by accidental means**, both the companies should pay", etc.

Again in the Logan case (at page 120) the Court says that under the statute the company is liable on an accident policy in case of suicide, "it being **admitted** that the assured came to his death from * * * **accidental means**".

We beg your Honors' consideration of that part of Judge Vandeventer's opinion in this case which deals with this suggestion, and which is referred to and quoted on pp. 39, 40 and 41 of our brief submitted at the argument of this case.

Your Honors also cite the Keller case from the Missouri Court of Appeals, which for the reasons pointed out on pp. 41, 42 and 43 of the brief does not control this case, and ought not to influence the judgment.

II.

The opinion filed is in direct conflict with the latest decision of the Supreme Court of Missouri.

The contention we are making is supported by the latest decision of the Missouri Supreme Court on this subject (Laessig v. Travelers, 169 Mo. 272). Indeed, the opinion in the case at bar is wholly at variance with the Laessig case, and bearing in mind that it is the **law of Missouri** applicable to **accident policies** which this Court is called upon to decide, this, the latest enunciation of the highest Court of that State (to which your Honor's attention has not been previously called), ought to be carefully considered before the opinion under discussion is finally approved.

In the Laessig case the action was to recover on an **accident** benefit certificate. The answer denied the death was accidental,

and pleaded affirmatively that death was due to **suicide** for which the defendant was exempt under the terms of its certificate.

The plaintiff proved merely that the insured was found dead on a railroad track. There was nothing in the proof to indicate whether death was due to accident or to suicide.

In the course of the opinion the Court says:

"The plaintiff contends that the instruction (refused) correctly states the law. The two postulates laid down by the plaintiff for this contention are, first, 'In suits on contracts like the one in question plaintiff makes out a *prima facie* case by offering the certificate and **proving the accident** and that proofs of death were duly made' * * * .

"The first postulate is correct. But the difficulty is that plaintiff has not measured up to the requirements of the postulate, in this, that she has not **proved the accident**; that is, she has not proved that the death was due to an external **accidental** cause. She proved the death but not the **accidental** death. And the **proof** of the **accidental** death is the **essential prerequisite** and condition precedent, to a right to recover on an **accident** policy. This is the distinguishing feature between **accident** and ordinary **life** policies. * * * In suits upon accident policies the burden of proof is upon the plaintiff (subject to the limitation that it is **not** to be **presumed** as a matter of law that the **deceased took his own life** or was murdered) to show that the death was caused by external violence and **accidental** means. This is exactly what the policy or contract itself provides. And this is the rule laid down by Mr. Justice Harlan in the Supreme Court of the United States in Travelers' Ins. Co. v. McConkey, 127 U. S. 661."

Yet in the case at bar, although it is stipulated and therefore **"proved there was NO ACCIDENT"**, this Court permits a recovery on a policy which only insures against **accident.**

The Missouri Supreme Court in the Laessig case quotes from and approves the rule laid down in the Whitlack case, that **proof of suicide** is **not proof of accident.**

That suicide (without more) is not an accident in Missouri is manifest from the opinion in the Laessig case and the

authorities there cited. It is in support of this proposition solely that we cite the Laessig case. The general law is as there laid down. The suicide statute, according to the opinion filed in the case at bar, has the effect to change this general law so as to make **all suicide an accident.** This certainly is not the plain purpose of the statute, but results from an expansive construction of a statute which encourages crime and which construction is not supported by the Logan case and is directly contrary to the Laessig case, and is not, we think, what the Court intends to hold.

Until the opinion rendered in this case announced this doctrine, no Court had ever foreshadowed it. The opinion, while citing authorities which seemingly support this conclusion, do not do so in fact because they deal, in the main, with **life** insurance and not with **accident** insurance, and as has been pointed out, the Logan case carefully avoids announcing any such result.

In concluding this argument, we ask for the application of those principles enunciated for the Court by Justice Harlan in the McConkey case (127 U. S. 666) where it is said:

"There is no escape from the conclusion that, under the issue presented by the **general denial in the answer,** it was incumbent on the plaintiff to show, from all the evidence, that the death of the insured was the result, not only of external and violent, but of **accidental means.** * * * Upon the whole case the Court is of the opinion that by the terms of the contract the burden of proof was upon the plaintiff, under the limitations we have stated, to show from all the evidence that the death of the insured was caused from external, violent and **accidental** means."

Was this burden discharged when the plaintiff here showed deliberate self-murder by a sane man? Clearly not.

Does the statute make **self-murder** by a **sane** man an accident? We think the answer is, No.

It is only by **assuming** that the company is primarily bound regardless of the stipulation, and then construing the stipulation for $500 as in reduction, or limitation, of this **assumed** liability, that the Court arrives at the conclusion announced.

Is this **assumption** warranted?

If not the conclusion announced **must be wrong.**

It is for these reasons that we urge that this case be reheard.

JAMES C. JONES,
Attorney for Aetna Life Insurance Company.

J. J. DARLINGTON,
JONES, JONES, HOCKER & DAVIS,
of Counsel.

IN THE

preme Court of the United States

ANDA M. S. WHITFIELD and the STATE OF MISSOURI, *ex rel.* HERBERT S. HADLEY, Attorney General, *Petitioners*, vs. ETNA LIFE INSURANCE COMPANY of Hartford, Connecticut, *Respondent*,	No. 258

PLICATION OF STATE OF MISSOURI TO INTERVENE.

Now comes the State of Missouri by Herbert S. Hadley, its ...orney General, and renewing its application to intervene and be ...rd herein as made in the petition for *certiorari* heretofore filed, ...pectfully shows:

1. This application is made in the interest of the public and ...on behalf of thousands of policy holders who have, since 1879, ...ken out policies of insurance upon the faith of the validity of the ...w which, as construed by the Circuit Court and by the Circuit ...ourt of Appeals, destroys the legislative policy of the state as it ...s existed for the last twenty-seven years, and impairs the poli...ies so taken out.

2. The question presented is of great public interest. The ...gislative policy of a state is at stake; the validity of thousands of ...utstanding policies involved, and the decision of the court below, ...f permitted to stand, results in contrariety of opinion between the ...tate and federal courts, the law question involved being submitted ...pon the joint brief of intervenor and the petitioner.

3. It is safe to say that a great many of the ordinary life policies in force in Missouri attempt to, in some way, limit the amount of recovery in case of death by suicide. Several companies are, by the reported cases cited in the brief, shown to have policies limiting in case of suicide to the amount of premiums paid, while the respondent in such cases limits the recovery to one-tenth of the amount of the insurance. It would be an endless task to discover and compile the provisions made in this respect by the various companies doing business in Missouri. It is sufficient to suggest that if such a limitation be valid the insurance companies can, and probably will, apply it to the vast amount of insurance annually written in Missouri, and thus destroy the benefits and advantages given by a wholesome statutory provision.

As an illustration of how insurers have changed the forms of their policies, in order to obtain the benefit of the decisions below, attention is called to a printed slip now attached to the policies of the Maryland Casualty Company, which reads:

ENDORSEMENT.

"This policy, subject otherwise to its terms and conditions, is hereby amended to pay the following amounts for death of the assured or beneficiary by suicide:

For the suicide of the assured, sane or insane, one-tenth of the principal sum of the policy.

For the suicide of the beneficiary, sane or insane, under circumstances otherwise covered under the beneficiary clause of this policy, one-twentieth of the principal sum of the policy.

Attached to and forming part of policy No. ..... issued by the Maryland Casualty Company, of Baltimore, to.....
of.....State of .....
Dated at .....190..
Not valid unless countersigned by
.....
General Agent.

.....
President."

Presumably the other companies have done likewise. Suffice it they may do so.

4. The public interest in this case therefore affirmatively appears when there is considered the amount of the insurance annually written in the state, to which, if the decision made below stands, a clause *could* and probably will be inserted in the policy limiting the amount of recovery.

(*a*) In 37 Missouri Insurance Report, 1906, p. VI, this tabulation appears:

"Total premiums paid for life insurance in Missouri during the year 1905, to companies now licensed in this state. $15,268,222.41
Total amount paid by life insurance companies to Missouri policy holders, 1905. . . . . 4,977,772.65

Difference. . . . . $10.290,449.76"

In other words, in 1905, life insurance companies in Missouri collected in premiums $10,290,449.76 more than they paid out for losses.

(*b*) For some reason the reports of the Insurance Department seem not to show the number or amount of accident policies issued, but do show the amount of premiums received on accident policies in Missouri for 1905 to be $789,716.80, of which was paid out $394,668.10, and of which the Aetna Life Insurance Company received $92,747.78 and paid out $40,933.31. This appears in 37 Missouri Insurance Report, 1906, pp. LXIII, LXIX:

"TABLE V.

"Transactions in Missouri in 1905 by insurance companies other than life, compiled from statements on file in the Insurance Department of the state * * *.

	H.—Personal. Accident.		
Name of Company	Gross premiums received	Gross losses paid in 1905	Gross losses. incurred in 1905.
Aetna Life, Connecticut	$92,747.78	$40,933.31	$43,475.49
. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .
Totals	$789,716.80	$394,668.10	$400,230.77"

(*c*) The number and amount of life policies issued by all companies upon lives of citizens of Missouri in 1905 were 184,776, aggregating $29,099,990, of which the Aetna Life issued 903, aggregating $1,964,233. The number of life policies issued by all companies upon lives of citizens of Missouri which were outstanding in 1905, were 642,080, aggregating $90,872,045, of which the Aetna Life had 4,694, aggregating $9,727,952. This appears in 37 Missouri Insurance Report, 1906, pp. LXXXIV, LXXXV:

"TABLE X.

Business done in Missouri in 1905 by the life insurance companies authorized to transact business in the state in 1906:

	Policies issued in 1905.		Policies in force Dec. 31, 1905.	
Name of Company.	Number.	Amount.	Number.	Amount.
Aetna Life, Connecticut.	903	$ 1,964,233	4,694	$ 9,727,952
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
Totals.	184,776	$29,099,990	642,080	$90,872,045

5. This case is therefore plainly one where a large public interest is involved, and it is believed that it is the proper duty of the state to intervene, for which privilege it now prays.

STATE OF MISSOURI,

By Herbert S. Hadley,

Attorney General.